

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-124187-06

Date:
August 27, 2007

Re:

Legend

Taxpayer	-
Country A	-
U.S. Possession	-
Date 1	-
Date 2	-
\$X	-

Dear :

This is in response to your letter, dated November 6, 2006, and prior correspondence, submitted by your authorized representative requesting a ruling concerning the estate tax consequences of a proposed purchase of certain debt obligations.

The facts and representations submitted are summarized as follows. Taxpayer was born in Country A. Taxpayer's parents were not U.S. citizens. On Date 1, Taxpayer

moved to U.S. Possession, a possession of the United States. Taxpayer has continuously resided in U.S. Possession since that date. On Date 2, Taxpayer became a United States citizen by reason of section 316 of the Immigration and Nationality Act, 8 U.S.C. 1427, based solely upon five years of continuous residency in U.S. Possession. Taxpayer spent none of the required statutory residence period outside U.S. Possession. Since he received U.S. citizenship, Taxpayer has resided continuously in U.S. Possession. Taxpayer proposes to purchase approximately \$X of portfolio debt obligations of the type described in section 2105(b)(3) (the "Portfolio Debt Obligations").

Taxpayer has requested a ruling to the effect that Portfolio Debt Obligations held by Taxpayer at the time of his death will be excluded from his taxable estate under section 2105(b)(3), if, at the time of the Taxpayer's death: (a) Taxpayer is a resident of U.S. Possession; and (b) the interest on the debt obligations would be eligible for the exemption from tax under section 871(h)(1) but for the Taxpayer's status during life as a U.S. citizen and resident of U.S. Possession.

Taxpayer represents that he acquired his U.S. Citizenship solely by reason of his residency in U.S. possession. Accordingly, Taxpayer represents that, at the time of his death, he would be considered a "nonresident not a citizen" under section 2209 of the Internal Revenue Code if Taxpayer is a resident of U.S. Possession at the time of his death.

Section 2001 of the Code imposes an estate tax on the taxable estate of every decedent who is a United States citizen or resident.

Section 2101 imposes a tax on the transfer of the taxable estate of every decedent nonresident not a citizen of the United States.

Section 2103 provides that for the purpose of the tax imposed by section 2101, the value of the gross estate of every decedent nonresident not a citizen of the United States shall be that part of his gross estate which at the time of his death is situated in the United States.

Section 2105(b)(3) provides that certain debt obligations are treated as property situated outside the United States "if . . . any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death."

In general, section 871(a)(1)(A) imposes a 30 percent income tax on U.S. source interest income received by a "nonresident alien individual." However, section 871(h)(1) exempts "portfolio interest" (described in section 871(h)(2)) from this tax if received by a "nonresident individual" from sources within the United States.

Section 2208 provides that a decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the estate tax, be considered a citizen of the United States unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2209 provides that a decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the estate tax, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 20.2209-1 of the Estate Tax Regulations provides that, the term "nonresident not a citizen of the United States" is considered to include a decedent dying after September 14, 1960, who, at the time of his death, was domiciled in a possession of the United States and was a United States citizen, and who acquired his United States citizenship solely by reason of his being a citizen of such possession or by reason of his birth or residence within such possession. The estate of such a decedent is, therefore, subject to the tax imposed by section 2101, which is the tax applicable in the case of a "nonresident not a citizen of the United States."

The legislative history underlying the enactment of section 2209 states:

Both H.R. 5547 and the Senate amendment provide (in effect) that U.S. citizens who are residents of a possession, and whose citizenship is derived from citizenship of that possession, are to be subject to the estate and gift tax imposed by the United States, in general, to the same extent as in the case of nonresidents not citizens of the United States.

The effect of this, in the case of estate tax, is to impose the U.S. estate tax with respect to the portion of the gross estate of these citizens . . . only with respect to that part of their gross estate which at the time of their death is situated in the United States.

H. R. Rep. No. 86-2214, at 5 (1960) (Conf. Rep.)

Based on the legislative history of section 2209, cited above, the legislative intent underlying this section is to apply the estate tax to certain decedents who are residents of possessions (i.e., those that acquired U.S. citizenship in a certain manner) in a manner comparable to the application of the estate tax to all other decedents who are nonresidents not citizens of the United States. In the case of a decedent who is a nonresident and not a U.S. citizen at the time of death, portfolio debt obligations are treated as situated outside the United States for estate tax purposes if the decedent

would have been exempt from tax under section 871(h)(1) had the decedent received interest on those obligations at the time of his death.

Accordingly, provided Taxpayer is described in section 2209 at the time of his death, we conclude that Taxpayer's Portfolio Debt Obligations would be eligible to be excluded from Taxpayer's gross estate by reason of section 2105(b)(3).

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing transactions under the cited provisions or any other provisions of the Code or regulations. Specifically no opinion is expressed or implied regarding the income tax treatment of Taxpayer or regarding whether Taxpayer will be a resident of U.S. Possession at the time of death. With respect to income taxation of a U.S. citizen or resident who is a bona fide resident of a U.S. possession, see section 931 through 935 and 937.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

George Masnik
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: